

Defense Nuclear Fac. Safety Board

§ 1706.5

In determining the meaning of any provision of this part, unless the context indicates otherwise, the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1706.3 Applicability.

(a) *General applicability.* This part applies to contractors and offerors only, except as otherwise herein provided. This part shall be incorporated by reference and made a part of all Board contracts in excess of the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). In addition, if determined appropriate by the contracting officer for the Board, this part may be incorporated by reference and made a part of Board contracts below the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). This part does not apply to the acquisition of services, including, without limitation, consulting services, through the personnel appointment process or to Board agreements with other federal government agencies, but shall apply to Board agreements with the management and operating contractors (and subcontractors and consultants there-to) of the National Laboratories.

(b) *Subcontractors and consultants.* The requirements of this part shall also apply to subcontractors and consultants proposed for, or working on, a Board contract, in each case where the amount of the subcontract or consultant agreement under which such subcontractor or consultant is or will be working is expected to exceed \$10,000, and in each other case where the contracting officer for the Board deems it appropriate to make the requirements of this part applicable to a subcontractor or consultant proposed for, or working on, a Board contract. The certificates or disclosures submitted by offerors or contractors pursuant to this part shall include certificates or disclosures from all subcontractors and consultants to contractor or offerors in those cases where this part applies by its terms to such subcontractors or consultants or has been applied to such persons by the contracting officer. Contractors and offerors shall assure that

contract clauses giving effect to this § 1706.3(b), satisfactory to the contracting officer, are included in subcontracts and consultant agreements of any tier involving performance of work under a prime contract covered by this part.

[57 FR 44652, Sept. 29, 1992; 58 FR 13684, Mar. 12, 1993]

§ 1706.4 Head of the contracting activity.

The head of the contracting activity for the Board shall be the General Manager.

§ 1706.5 General rules.

(a) *Award of Contracts.* Contracts shall generally not be awarded to an offeror:

(1) For any services where the award would result in the offeror evaluating products or services it has provided to the Board, is then providing to the Board, or is then offering to provide for the Board;

(2) For evaluation activities or research related to the Board's oversight of defense nuclear facilities, where the award would result in the offeror evaluating products or services it has provided, is then providing, or is then offering to provide to DOE or to contractors or subcontractors for defense nuclear facilities; or

(3) For any other services (the acquisition of which is otherwise covered by this part), where the Board has determined, pursuant to § 1706.7, that an actual or potential OCI exists and cannot be avoided, and the Board does not waive that OCI. Paragraphs (a) (1) and (2) of this section also apply when award would result in evaluation of products or services of another entity where the offeror has been, is, or would be substantially involved in the development of the product or performance of the service, or has other substantial involvement regarding the product or services.

(b) *Subsequent related contracts.* (1) A Board contractor under a Board contract shall normally be ineligible to participate in Board contracts or subcontracts that stem directly from the contractor's performance of work under a previous Board contract, where

the Board determines that an OCI would exist because:

(i) The expectation of receiving the subsequent contract is likely to diminish the contractor's capacity to give impartial assistance and advice, or otherwise result in a biased work product; or

(ii) An offeror on the subsequent contract would have an unfair competitive advantage by virtue of having performed the first contract.

(2) If a contractor under a Board contract prepares a complete or essentially complete statement of work or specifications in the performance of a contract, the contractor shall be ineligible to perform or participate in the initial contractual effort that is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications.

(c) *National Laboratory personnel.* The Board may engage personnel of the National Laboratories who have expertise needed by the Board in the performance of its oversight responsibilities, provided that prior to each such engagement, the Board determines either:

(1) That the nature of work performed by such personnel for DOE does not pose actual or potential OCIs with respect to the particular work covered by the Board contract; or

(2) That such engagement is in the Government's best interests and that a waiver should be granted pursuant to § 1706.8. In all cases involving National Laboratory personnel, notice of the circumstances of the contract, stating the rationale for use of the personnel, shall be published in the FEDERAL REGISTER.

(d) *Work for others.* During the term of any Board contract, the contractor may not enter into consulting or other contractual arrangements with other persons or entities, the result of which could give rise to an OCI with respect to the work being performed under the contract. The prime contractor shall ensure that all of its employees, subcontractors, and consultants under the contract abide by this paragraph. If the contractor has reason to believe that any proposed arrangement with other persons or entities may involve an actual or potential OCI, it shall promptly

inform the Board in writing of all pertinent facts regarding such proposed arrangement. In the case of task order contracts, this paragraph applies, subject to § 1706.7(c), only to specific ongoing tasks that the contracting officer authorizes the contractor to perform.

(e) *Contractor protection of Board information that is not publicly available.* If the contractor in the performance of a Board contract obtains access to information, such as Board plans, policies, reports, studies, or financial plans, or internal data protected by the Privacy Act (5 U.S.C. 552a), proprietary information, or any other data which has not been released to the public, the contractor shall not:

(1) Use such information for any private purpose until the information has been released or is otherwise made available to the public;

(2) Compete for work for the Board based on such information for a period of six months after either the contract has been completed or such information has been released or otherwise made available to the public, whichever occurs first, or submit an unsolicited proposal to the Government based on such information until one year after such information is released or otherwise made available to the public, unless a waiver permitting such action has been granted pursuant to § 1706.8; or

(3) Release the information without prior written approval of the contracting officer, unless such information has previously been released or otherwise made available to the public by the Board.

[57 FR 44652, Sept. 29, 1992; 58 FR 13684, Mar. 12, 1993]

§ 1706.6 Solicitation provisions.

(a) *Advisory or assistance services.* There shall be included in all formal Board solicitations for advisory or assistance services where the contract amount is expected to exceed \$25,000 (or the then applicable small purchases threshold), a provision requiring a certificate representing whether award of the contract to the offeror would present actual or potential OCIs. Apparent successful offerors will be required to submit such certificates, but